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Frank S. Simone  
Government Affairs Director

Suite 1000  
1120 20th Street, N.W.  
Washington, DC 20036  
202 457-2321  
FAX 202 457-2165  
fsimone@gamgw.attmail.com

June 26, 1998

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JUN 26 1998

Ms. Magalie Roman Salas, Secretary  
Federal Communications Commission  
1919 M Street, N. W. - Room 222  
Washington, D. C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: Ex parte, CC Docket No. 97-100, Petition for Expedited Declaratory Ruling  
Preempting Arkansas Public Service Commission Pursuant to Section 252(e)(2) of the  
Communications Act of 1934, as amended

Dear Ms. Roman Salas:

On June 25, 1998 Steven Garavito and the undersigned met with Alex Starr, Jonathan Askin, and Joseph Welsh of the Common Carrier Bureau's Policy and Program Planning Division. The purpose of the meeting was to "discuss whether and to what extent Order Nos. 12 and 13 of the Arkansas Public Service Commission in the interconnection proceeding between AT&T Communications of the Southwest, Inc. (AT&T) and Southwestern Bell Telephone Company (SWBT) affect issues raised by the preemption petitions filed with the FCC by MCI Telecommunications Co., Inc. (MCI) and American Telecommunications Services, Inc. (ACSI) regarding the Arkansas Telecommunications Regulatory Reform Act of 1997 (Arkansas Act or Act 77), CC Docket No. 97-100." (June 10 Memorandum)<sup>1</sup> The June 10 Memorandum requested written responses to four questions relating to this topic.

AT&T has attached its responses to these questions, along with a copy of the June 10 Memorandum, to this Notice.

Two copies of this Notice are being submitted to the Secretary of the FCC in accordance with Section 1.1206(a)(1) of the Commission's rules.

Sincerely,

ATTACHMENTS

cc: C. Matthey J. Askin  
A. Starr J. Welsh

<sup>1</sup> Memorandum to Frank Simone, AT&T Corp. from Carol Matthey, Chief-Policy and Program Planning Division, FCC CCB, et. al., Impact of Arkansas PSC Order Nos. 12, 13 on FCC Preemption Proceeding 97-100, June 10, 1998.

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**FCC ARKANSAS QUESTIONS  
REGARDING ORDER NOS. 12 AND 13**

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**JUN 26 1998**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

QUESTION NO. 1

*How do Order Nos. 12 and 13 resolve the non-pricing issues decided in favor of AT&T in Order No. 5? Do Order Nos. 12 and 13 resolve all such issues in favor of SWBT, as apparently required by Order No. 11? If not, why not?*

RESPONSE TO QUESTION NO. 1

Order No. 12 reiterates the Arkansas Public Service Commission's (APSC) holding in Order No. 11 that it cannot impose requirements on an ILEC to comply with the Telecommunications Act of 1996 (Act) unless the ILEC agrees to such conditions. Thus, in Order No. 12 the APSC denied SWBT's motion for reconsideration of Order No. 11, stating that Order No. 11 was a recognition of "the limitations placed upon the Commission's jurisdiction and authority to regulate electing incumbent local exchange carriers (ILECs) and to establish terms, conditions and rates for interconnection between electing ILECs and competitive local exchange carriers (CLECs) pursuant to Act 77." p. 2. The APSC also acknowledged that its authority in an arbitration was limited by Section 9 of Act 77 which "mandat[es] approval of the ILEC's position if the ILEC offers interconnection terms which meet the minimum requirements of 47 U.S.C. §251." p. 3.

In Order No. 13, the APSC stated that it was resolving disputed arbitration issues pursuant to §§ 251 and 252 and applicable FCC regulations, as well as "Ark. Code Ann. §23-17-409, and Orders No. 5, No. 11 and No. 12." p. 8 (emphasis added). The APSC's reliance on Order No. 11 is significant because in that order the APSC reversed Order No. 5 on "any interconnection, resale and unbundling issues . . . which adopted the position of AT&T." p. 5. As a matter of principle, therefore, the APSC made clear in both Orders No. 12 and No. 13 that it was not retreating from, and was still being guided by, its holding in Order No. 11 that it lacks "authority to order the ILEC, SWBT, to provide interconnection, resale or unbundling to a CLEC, AT&T, on any different terms, conditions or prices than those proposed by the ILEC." p. 4.

Because the APSC allowed its holding in Order No. 11 to remain in effect, it ratified the summary reversal in Order No. 11 of many issues that had been resolved in AT&T's favor in Order No. 5, and for which AT&T and SWBT had agreed to implementing language. For example, in Order No. 5 the APSC adopted AT&T's position that SWBT should make dark fiber available as an unbundled network element. p. 28. The APSC did so because (1) it was technically feasible for SWBT to unbundle dark fiber, and (2) adopting SWBT's position would allow SWBT to declare any facility deployed for future growth as not subject to unbundling, thereby defeating the Act's intent. *Id.* AT&T and SWBT reached agreement on language for the interconnection agreement reflecting

AT&T  
6/25/98

the APSC's ruling. See Attachment 6, § 13 of the Compliance Interconnection Agreement, filed July 25, 1997 (7/25/97 Compliance Agreement). As a result, dark fiber was not listed as a disputed issue in the Track B matrix filed with the APSC. Order No. 11 summarily reversed the APSC's holding that dark fiber should be unbundled, and dark fiber was not addressed in Order No. 13. Thus, in the post-Order No. 13 interconnection agreement filed with the APSC on June 10, 1998, SWBT is no longer required to unbundle dark fiber.<sup>1</sup>

Similarly, the APSC had adopted AT&T's position in Order No. 5 and held that SWBT's Distance Learning Service must be offered for resale at a wholesale discount and that SWBT's position to the contrary was in "direct conflict" with the *First Report and Order*. p. 8. AT&T and SWBT had negotiated language reflecting this ruling in the 7/25/97 Compliance Agreement. See 7/25/97 Compliance Agreement, Att. 1, § 1.5. Yet, the APSC's holding was summarily reversed in Order No. 11, and the resale of Distance Learning Service was not addressed in Order No. 13. As a result, the new interconnection agreement filed with the APSC on June 10, 1998 does not require SWBT to make this service available for resale with a wholesale discount.

Moreover, in Order No. 13 the APSC in many instances ratified its summary reversal of AT&T-favorable rulings in Order No. 5 and specifically ruled that it was adopting SWBT's position on a disputed issue. The APSC did so even though it had initially adopted AT&T's position because it complied with the Act, and SWBT's position did not. For example, in Order No. 5 the APSC had adopted AT&T's position that it should be able to collocate in all SWBT huts, vaults, cabinets, central offices, tandem offices or other SWBT buildings or structures that house network facilities. p. 37. Yet, the APSC held in Order No. 13 that SWBT's contrary language should be used in the interconnection agreement, citing Orders No. 5 and No. 11, and Ark. Code Ann. §23-17-409(f). p. 9 (Collocation Issues, Issue 1). Thus, the APSC explicitly reversed its initial ruling in AT&T's favor based on Act 77.

Further, in Order No. 5 the APSC adopted AT&T's position that SWBT must make promotions of less than 90 days available for resale, albeit without a wholesale discount, because AT&T's position was consistent with the Act and the *First Report and Order*. p. 7. At the same time, the APSC held that, under ACT 77, SWBT was not required to make promotions available for resale at all. p. 8. When the parties attempted to produce a mutually agreeable interconnection agreement, SWBT claimed that SWBT was under no obligation to make short term promotions available for resale at the promotional price. In Order No. 13, the APSC adopted SWBT's contract language, relying on Ark. Code Ann. §23-17-409(d) and 47 C.F.R. §56.613. p. 9 (Resale and

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<sup>1</sup> AT&T is submitting as part of this *ex parte* a matrix listing the issues identified in the Staff's letter to AT&T dated June 10, 1998, and showing the resolution of that issue in Order Nos. 5, 11 and 13.

Miscellaneous Issues, Issue 2). Again, the APSC reversed its initial ruling in AT&T's favor based on Act 77.

Yet, on some other issues the APSC appeared to find in favor of AT&T even though SWBT had opposed that position. For example, in Order No. 5 the APSC had adopted AT&T's position that all restrictions on resale, other than cross-class restrictions, are presumptively unreasonable. pp. 10-11. The APSC found that SWBT's position conflicted with the *First Report and Order*, while AT&T's position complied with that order.. p. 10. In Order No. 13, the APSC adopted AT&T's contract language. p. 9 (Resale and Miscellaneous Issues, Issue 1). However, despite adopting this general language prohibiting restrictions on resale, the APSC adopted SWBT language imposing restrictions on AT&T's resale of PLEXAR (Centrex) services. p. 9 (Resale and Miscellaneous Issues, Issues 3, 4).

QUESTION NO. 2

*Describe how, if at all, Order Nos. 12 and 13 explain the way in which their resolutions of the non-pricing issues decided in favor of AT&T in Order No. 5 comport with the minimum requirements of Section 251?*

RESPONSE TO QUESTION NO. 2

In Order No. 13, the APSC cites in its matrix (pp. 8-12) various statutes, rules and orders apparently supporting its individual determinations. Other than these citations in Order No. 13, the APSC does not explain how the non-pricing issues decided in favor of AT&T comport with the minimum requirements of Section 251.

QUESTION NO. 3

*Does the way in which Order Nos. 12 and 13 resolve the non-pricing issues decided in favor of AT&T in Order No. 5 comport with the minimum requirements of section 251?*

RESPONSE TO QUESTION NO. 3

AT&T believes that the issues it presented for arbitration were necessary in order for the resulting interconnection agreement to comply with Section 251, and the Commission's regulations. In Order No. 5, where the APSC adopted AT&T's position, it consistently stated that AT&T's position complied with the Act and/or the Commission's *First Report and Order*. In Order No. 12, the APSC reiterated the conclusion it reached in Order No. 11 that it had no authority to impose requirements on an ILEC to comply with the Act unless the ILEC agreed to such conditions. Moreover, as pointed out in the Response to Question 1, above, because the APSC allowed its holding in Order No. 11 to remain in effect, many issues that had been resolved in AT&T's favor in Order No. 5 -

and on which AT&T and SWBT had agreed to implementing language – were summarily reversed. The APSC ratified this summary reversal and further implemented its interpretation of Act 77 in Order No. 13, where it explicitly reversed many of its holdings in Order No. 5 favoring AT&T and found in favor of SWBT. See Response to Question 1, above. Such resolution does not comport with the minimum requirements of Section 251.

Moreover, as AT&T has stated before in this proceeding, in attempting to ascertain the requirements of Section 251, a state commission is required to consider not merely the language of that section, but also the language of the Act as a whole, its legislative history, and its overall purpose of creating local competition. *See* AT&T March 5, 1998 Ex Parte, p. 3. Further, the Act may require a state commission to go beyond the “minimal” regulations established by the Commission in order to ensure compliance with Section 251. As interpreted and applied by the APSC, Act 77 does not permit the APSC to exercise the authority necessary to ensure compliance with Section 251.

QUESTION NO. 4

*Does the way in which Order Nos. 12 and 13 resolve the non-pricing issues decided in AT&T's favor in Order No. 5 support SWBT's interpretation of Order No. 11 (as described above), or AT&T's interpretation of Order No. 11 (as described above), or some other interpretation?*

RESPONSE TO QUESTION 4

AT&T believes that the resolution of non-pricing issues in Order Nos. 12 and 13 supports its interpretation of Order No. 11. The APSC has not modified its statement in Order No. 11 interpreting the scope of its authority, and has allowed the summary reversal of many issues initially decided in AT&T's favor to remain in effect. In Order No. 13, where the APSC ruled on individual issues, it by and large abandoned its initial rulings in favor of AT&T and adopted the positions of SWBT. *See* Response to Question 1, above. On some issues, however, the APSC adopted AT&T's position in Order No. 13, even though SWBT had opposed that position. Although AT&T believes that these rulings in AT&T's favor were required by the Act, the APSC provided no explanation in Order No. 13 of how these individual determinations were consistent with its interpretation of Act 77.

<u>Issue<sup>1</sup></u>	<u>Order No. 5</u>	<u>Order No. 11</u>	<u>Order No. 13</u>
Tab 2 - Resale 2. Promotions - Resale	p. 7 Adopts AT&T's position that SWBT must make promotions of less than 90 days available for resale, although without wholesale discount, because it is consistent with the Act and the <i>First Report and Order</i> . p. 8 Adopts SWBT's position that promotions of less than 90 days will not be available for resale because Act 77 excludes promotions from SWBT's resale obligation.	p. 5 PSC reverses "any" interconnection, resale and unbundling issue which adopted AT&T's position.	p. 9 Adopts SWBT language that SWBT need not make promotions of 90 days or less available for resale, even without a wholesale discount. Relies on Ark. Code Ann. §23-17-409(d) and 47 CFR §51.613.
Resale Distance Learning Service  Not in the issues matrix because AT&T and SWBT had reached agreement on language implementing Order No. 5. See 7/25/97 Compliance Agreement, Att. 1, §1.5.	p. 8 Adopts AT&T's position that SWBT must offer Distance Learning Service for resale with a wholesale discount because SWBT's position is in "direct conflict" with FCC Order.	p. 5 PSC reverses "any" interconnection, resale and unbundling issue which adopted AT&T's position.	Not addressed. However, SWBT position adopted in interconnection agreement because Order No. 11 reversed all adoptions of AT&T's position in Order No. 5.
Tab 2 - Resale 1. Use Limitations	p. 11 Adopts AT&T's position because it complies with the FCC Order.	p. 5 PSC reverses "any" interconnection, resale and unbundling issue which adopted AT&T's position.	p. 9 Adopts AT&T language that additional tariff restrictions, other than cross-class restriction permitted by the Act, are presumptively unreasonable. Relies on § 251(c)(4) and 47 CFR §51.613. However, adopts SWBT position in Issues 3 and 4 that PLEXAR (Centrex) is subject to resale restrictions.

<sup>1</sup> The issue number refers to the listing in Part B of the Compliance Interconnection Agreement (the issues matrix) submitted to the Arkansas PSC on July 25, 1997. These issue numbers correspond to those set forth by the PSC in its Order No. 13 at pages 8-12. As noted, some of the issues were not listed in the issues matrix because AT&T and SWBT had reached agreement on language in the interconnection agreement implementing Order No. 5 at the time the Compliance Interconnection Agreement was submitted to the APSC on July 25, 1997.

<u>Issue</u>	<u>Order No. 5</u>	<u>Order No. 11</u>	<u>Order No. 13</u>
<p><b>Dark Fiber</b></p> <p>Not in the issues matrix because AT&amp;T and SWBT had reached agreement on language implementing Order No. 5. See 7/25/97 Compliance Agreement, Att. 6, § 13.</p>	<p>p. 28 Adopts AT&amp;T's position that SWBT make dark fiber available as a UNE because otherwise SWBT could declare any facility deployed for future growth as not subject to unbundling. This could too easily defeat the Act's intent. Also, SWBT did not demonstrate that it was technically infeasible to unbundle dark fiber.</p>	<p>p. 5 PSC reverses "any" interconnection, resale and unbundling issue which adopted AT&amp;T's position.</p>	<p>p. 9 Adopts SWBT position citing Order No. 11 and Ark. Code Ann. §23-17-409(f).</p>
<p><b>Tab 3 - UNES</b></p> <p>11. DCS at parity with SWBT's own access to DCS.</p>	<p>p. 31 Adopts AT&amp;T's position because it is consistent with the FCC Order.</p>	<p>p. 5 PSC reverses "any" interconnection, resale and unbundling issue which adopted AT&amp;T's position.</p>	<p>p. 9 Adopts AT&amp;T's position. Relies on §251 and FCC Order, ¶¶444, 445.</p>
<p><b>Tab 4 - Collocation</b></p> <p>1. Eligible Structures</p>	<p>p. 37 Adopts AT&amp;T's position that it should be able to collocate physically or virtually in all SWBT huts, vaults, cabinets, central offices, tandem offices or other similar buildings or structures of SWBT that house network facilities. AT&amp;T's position is consistent with the FCC Order.</p>	<p>p. 5 PSC reverses "any" interconnection, resale and unbundling issue which adopted AT&amp;T's position.</p>	<p>p. 9 Adopts SWBT's language. Relies on Orders No. 5 and 11, and Ark. Code Ann. §23-17-409(f).</p> <p>AT&amp;T and SWBT subsequently negotiated resolution of this issue.</p>
<p><b>Tab 2 - Resale and Miscellaneous Issues</b></p> <p>23. Reciprocal Compensation</p>	<p>p. 38 Adopts AT&amp;T's position that bill and keep should be used for reciprocal compensation for 9 months after which it would continue unless a significant, continuing disparity in traffic levels was demonstrated.</p>	<p>p. 5 PSC reverses "any" interconnection, resale and unbundling issue which adopted AT&amp;T's position.</p>	<p>p. 9 States that issue is not ripe for decision.</p> <p>AT&amp;T language on reciprocal compensation included in interconnection agreement.</p>

<u>Issue</u>	<u>Order No. 5</u>	<u>Order No. 11</u>	<u>Order No. 13</u>
tab 2 - Resale and Miscellaneous Issues 24. Optional Extended Area service	p. 39 Adopts AT&T position that, for purposes of reciprocal compensation, all extended area traffic should be treated as local traffic.	p. 5 PSC reverses "any" interconnection, resale and unbundling issue which adopted AT&T's position.	p. 9 Adopts AT&T's position. Relies on Order No. 5 and the Telecom Act.
Dialing Parity Not in the issues matrix.	p. 41 Adopts AT&T position that SWBT must provide dialing parity for <u>local</u> calls.  p. 22 Adopts SWBT position that SWBT need not provide intraLATA toll dialing parity until SWBT receives interLATA relief.	p. 5 PSC reverses "any" interconnection, resale and unbundling issue which adopted AT&T's position.	Not addressed.
Poles, Conduits & Rights-of-Way Issue of whether these interconnection issues should be addressed in a separate Master Agreement. Not listed in issues matrix.	p. 43 Adopts AT&T position that access to poles, ducts, conduit and rights-of-way should be addressed in interconnection agreement and not in a separate Master Agreement.	p. 5 PSC reverses "any" interconnection, resale and unbundling issue which adopted AT&T's position.	Not addressed.  AT&T and SWBT have negotiated region-wide language for interconnection agreement addressing poles, ducts, conduit and rights-of-way.
Parity of Treatment  Not in the issues matrix because AT&T and SWBT had reached agreement on language implementing Order No. 5. See 7/25/97 Compliance Agreement, Att. 6, § 2.17.1.	p. 57 Adopts AT&T position that interconnection agreement should include terms that require SWBT to provide access to resale, UNEs, interconnection and ancillary functions on terms at least equal to what SWBT uses to provide such services and facilities to itself. This is consistent with FCC Rules §§ 51.603(b); 51.311(b).	p. 5 PSC reverses "any" interconnection, resale and unbundling issue which adopted AT&T's position.	Not addressed.  Parity language of Att. 6, § 2.17.1 is preserved in current interconnection agreement.





**COMMON CARRIER BUREAU  
POLICY & PROGRAM PLANNING DIVISION**

To: Todd Silbergeld, SBC  
Frank Simone, AT&T

From: Carol Matthey, Chief, Policy and Program Planning Division, FCC CCB  
Alex Starr, Policy Division Staff  
Jonathan Askin, Policy Division Staff  
Joe Welch, Policy Division Staff

Re: Impact of Arkansas PSC Order Nos. 12, 13 on FCC Preemption Proceeding 97-100

Date: June 10, 1998

We would like to meet soon with representatives of your respective companies to discuss whether and to what extent Order Nos. 12 and 13 of the Arkansas Public Service Commission (Arkansas Commission or Arkansas PSC) in the interconnection arbitration proceeding between AT&T Communications of the Southwest, Inc. (AT&T) and Southwestern Bell Telephone Company (SWBT) affect issues raised by the preemption petitions filed with the FCC by MCI Telecommunications Co., Inc. (MCI) and American Communications Services, Inc. (ACSI) regarding the Arkansas Telecommunications Regulatory Reform Act of 1997 (Arkansas Act or Act 77), CC Docket No. 97-100. To foster productive discussions during these meetings, we summarize below the issues we would like to address.

In Order No. 11, the Arkansas Commission concluded that, "[p]ursuant to the restrictions on the [Arkansas] Commission's authority in Act 77, the [Arkansas] Commission has no authority to order SWBT to provide interconnection, resale or unbundling to AT&T on any different terms or conditions than SWBT will agree to provide such services to a competitor *if those terms and conditions meet the minimum requirements for interconnection specified in Sec. 251 of the 1996 Act.*" Order No. 11 at 4 (emphasis added). Also in Order No. 11, the Arkansas Commission "reverse[d] Order No. 5 on *any* interconnection, resale, and unbundling issues, with the exception of pricing, which adopted the position of AT&T." Order No. 11 at 5 (emphasis added). In Order No. 5, however, the Arkansas Commission often adopted the position of AT&T precisely because it believed that doing so was necessary to comply with the minimum requirements of section 251. See Order No. 5 at 7 (resale of promotions), 8-9 (resale of distance learning services), 9-11 (presumptive unreasonableness of resale restrictions), 25-28 (unbundling of dark fiber), 30-31 (unbundling of multiplexing and other services), 36-37 (collocation in huts and vaults), 37-38 (bill and keep method of reciprocal compensation), 38-39 (geographic scope of local calling areas), 40-41 (dialing

parity for intraLATA calls), 41-43 (access to poles, ducts, and conduits), 57 (equal access to services, UNEs, interconnection, and ancillary functions).

In prior discussions, we asked SWBT and AT&T to address this seeming inconsistency between Order No. 5 and Order No. 11. In particular, we asked SWBT and AT&T to explain how one can square the Arkansas Commission's professed standard of adherence to the minimum requirements of section 251 in Order No. 11, with the Arkansas Commission's reversal in Order No. 11 of *all* non-pricing decisions favoring AT&T in Order No. 5, including decisions in Order No. 5 apparently rendered to meet the minimum requirements of section 251.

SWBT and AT&T responded with conflicting answers. In sum, SWBT stated that, even after Order No. 11, the Arkansas Act does not preclude the Arkansas Commission from interpreting for itself and imposing, over SWBT's objection, the "minimum requirements" of section 251 in a manner that supplements or exceeds the requirements specified in FCC orders and regulations. In SWBT's view, the problem with Order No. 11 is not that it construes the Arkansas Act to preclude the Arkansas Commission from interpreting and enforcing the minimum requirements of section 251, but merely that it fails to explain how the reversal of Order No. 5's rulings in favor of AT&T comports with the minimum requirements of section 251. SWBT argued, for example:

The Arkansas PSC can -- indeed, must -- interpret for itself what constitutes the "minimum requirements" of section 251 and is not limited to the requirements specified in the FCC's *Local Competition Order*. In Order No. 11, the Arkansas PSC has interpreted the Arkansas Act only to preclude it from imposing on incumbent LECs any interconnection, unbundling, or resale obligation *beyond* those required by federal law.

\* \* \* \*

To the extent that the Arkansas PSC believes that section 251 requires interconnection, unbundling, or resale that is not explicitly required in the *Local Competition Order*, the PSC *may* under Arkansas law -- and *must* under federal law -- impose those obligations.

\* \* \* \*

The problem with the PSC's decision in Order No. 11 was not that it limited SWBT's obligations to the minimum requirements of section 251 and the *Local Competition Order* -- rather, it was in the way it broadly reversed its prior decisions without explaining how SWBT's particular proposals satisfied the

requirements of section 251 and the *Local Competition Order*. . . .<sup>1</sup>

AT&T construed Order No. 11 very differently. In brief, AT&T stated that, after Order No. 11, the Arkansas Act precludes the Arkansas Commission from interpreting for itself the "minimum requirements" of section 251, and from imposing on SWBT any "interconnection" requirement to which SWBT objects, even a requirement imposed by FCC orders or regulations. According to AT&T, Order No. 11 must be read in this limiting manner, because Order No. 11 reverses all of Order No. 5's non-pricing decisions favoring AT&T without also explaining that such reversals comport with the minimum requirements of section 251. AT&T argued, for example:

AT&T believes that [in Order No. 11] the Arkansas commission treated Act 77 as a mandatory rule of construction prohibiting it from interpreting the [1996 federal] Telecommunications Act in such a manner that would require incumbent LECs to provide access and interconnection on any terms and conditions to which they do not agree. The Arkansas Commission's interpretation and application of Act 77 in Order No. 11 forecloses the possibility that the Arkansas commission believes that it is permitted by Act 77 to impose even those obligations specified in the FCC's Local Competition Order, unless SBC agrees to them. This is confirmed by the numerous respects in which the result that appears to have been mandated in Order No. 11 violates the FCC's Order.

\* \* \* \*

Order No. 11 reflects the Arkansas commission's belief that Act 77 prohibits it from interpreting the [1996 federal] Telecommunications Act to require any term or condition for interconnection, access to unbundled elements and resale which is opposed by the incumbent LEC.<sup>2</sup>

Since SWBT and AT&T responded to our inquiries regarding Order No. 11, the Arkansas Commission has issued Order Nos. 12 and 13 in the interconnection arbitration proceeding between SWBT and AT&T. Order Nos. 12 and 13 may have some relevance to

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<sup>1</sup> Attachment to Letter dated March 10, 1998 from Geoffrey M. Klineberg, Attorney for SWBT, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 97-100, at 3-4, 7 (emphasis in original).

<sup>2</sup> Attachment to Letter dated March 5, 1998 from Frank S. Simone, Government Affairs Director, AT&T, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 97-100, at 3, 5.

the issues before the FCC regarding preemption of the Arkansas Act. To address that point, we ask that SWBT and AT&T respond, in writing if at all possible, to the following questions:

1. How do Order Nos. 12 and 13 resolve the non-pricing issues decided in favor of AT&T in Order No. 5? Do Order Nos. 12 and 13 resolve all such issues in favor of SWBT, as apparently required by Order No. 11? If not, why not?

2. Describe how, if at all, Order Nos. 12 and 13 explain the way in which their resolutions of the non-pricing issues decided in favor of AT&T in Order No. 5 comport with the minimum requirements of section 251.

3. Does the way in which Order Nos. 12 and 13 resolve the non-pricing issues decided in favor of AT&T in Order No. 5 comport with the minimum requirements of section 251?

4. Does the way in which Order Nos. 12 and 13 resolve the non-pricing issues decided in AT&T's favor in Order No. 5 support SWBT's interpretation of Order No. 11 (as described above), or AT&T's interpretation of Order No. 11 (as described above), or some other interpretation?

In answering these questions, please identify and discuss each relevant arbitration issue separately, comprehensively, and as specifically as possible, including a substantive summary, the pages of each order in which the issue is discussed and resolved, and the issue's reference number. Please address, at a minimum, the issues confronted in Order No. 5 at 7 (resale of promotions), 8-9 (resale of distance learning services), 9-11 (presumptive unreasonableness of resale restrictions), 25-28 (unbundling of dark fiber), 30-31 (unbundling of multiplexing and other services), 36-37 (collocation in huts and vaults), 37-38 (bill and keep method of reciprocal compensation), 38-39 (geographic scope of local calling areas), 40-41 (dialing parity for intraLATA calls), 41-43 (access to poles, ducts, and conduits), and 57 (equal access to services, UNEs, interconnection, and ancillary functions).

We very much appreciate your participation in this dialogue and look forward to discussing the foregoing matters with you. Please call Alex Starr (418-7284) promptly after receipt of this memorandum to schedule a meeting. In addition, please attach a copy of this memorandum to (i) any written responses hereto that you file with the Commission in CC Docket No. 97-100, and (ii) any related meeting summary that you file with the Commission in CC Docket No. 97-100. If you would like a "hard copy" of this memorandum, in addition to a faxed copy, please call Joe Welch (418-1598).

cc: Danny E. Adams, ACSI  
Lisa B. Smith, MCI